



BLANEY - DONOHUE & WEINBERG, P.C.

William G. Blaney, Esquire*

Michael J. Donohue, Esquire†□

Kyle D. Weinberg, Esquire

Frank Guaracini, III, Esquire+

John R. Dominy, Esquire*+

Charles E. Schlager, Jr., Esquire+

Christopher V. Della Pietra, Esq.
Potters & Della Pietra LLP
100 Passaic Avenue
Fairfield, New Jersey 07004
Via USPS and email to: cdellapietra@pdplawfirm.com

April 29, 2022

Re: North Wildwood/Gold Medal Environmental

TERMINATION OF CONTRACT

Dear Mr. Della Pietra:

For the reasons set forth herein below in accordance with law and as authorized by the Mayor and Council of the City of North Wildwood (the City), this will serve as termination of the City of North Wildwood's contract (the contract) with Gold Medal Environmental, New Jersey, Inc. (GME), entered into on or about October 8, 2018, as dictated by certain contractual axioms as detailed herein below as well as under Article IX of the contract.

As you know, GME performed its obligations under the contract through 2020 and 2021, but on March 8, 2022, the Chief Executive Officer (the CEO) of GME appeared at the office of the North Wildwood Director of Public Works and indicated that if the City was not prepared to increase payments to GME by two-and-a-half to three times, GME would "leave the trash in the streets" of North Wildwood. In other words, GME expressly stated that it would breach a material aspect of the contract, in fact the essence of the contract, if the City did not acquiesce to GME's demands.

On March 17, 2022, the CEO sent an email with the subject line, "Imperiled Status of Sanitation Services," to elected officials and business administrators in North Wildwood, Wildwood, Avalon, Ocean City, Cape May Point, Woodbine and West Wildwood, New Jersey. The express statement of the subject line as well as the contents of multiple emails with that subject line was that GME intended to breach the contract if it did not obtain significantly more money from the municipalities.

† Also a Member of the U.S. Supreme Court Bar
□ Former Judge of the New Jersey Superior Court
** Also a Member of the New York Bar
* Also a Member of the Pennsylvania Bar
+ Of Counsel

2123 Dune Drive – Suite 11
Avalon, NJ 08202
Ph. 609-435-5368
Fx. 609-435-5473

The City agreed to discuss GME's concerns, which were supposedly related to the impacts of the Covid-19 pandemic and other items on economic conditions. Instead, the CEO outlined how the original 2018 contracts, in his opinion, should have never been entered into by GME because he found them to be inartfully written and they did not include certain protections for GME within the contract that he would have insisted upon. The City and GME have had a binding contract since the award in October of 2018. Nevertheless, the City agreed to entertain a proposal from GME for some contract adjustment.

Thereafter, GME, through the CEO, submitted a proposal to the City for an extraordinary escalation of the amount of payment to GME under the contract. All of this came under the continuing threat to "leave trash in the streets" if GME's demands were not met.

On April 25, 2022, the CEO stated in an email in response to what was essentially a counter-proposal sent to him by the City of North Wildwood Administrator that GME rejected the counter-proposal and stated further, "this doesn't seem prudent as it will surely indicate garbage being left on the street if we ration services down to the paid amount."

In an email also dated April 25, 2022, from the CEO to the City Administrator, the CEO stated, "**we are not picking up weekly trash and recycling at \$5.78 a unit / month under these emergency circumstances.** Let's get this done before it gets ugly." (Emphasis in original).

Then, in an email dated April 26, 2022, from the CEO to the Mayors of North Wildwood, Wildwood, West Wildwood and Ocean City, New Jersey, the CEO stated,

My message hasn't changed: trash (or recycling or yard waste, etc) will start being left on the streets May 1 (whatever we cannot afford to pick up at current contract prices) if we are not back in good faith negotiations to address this emergency situation as other towns have already, and your offices will choose both where this starts and ends. I gave a reprieve until the 15th for those of you who had meeting schedules that would not allow this to be completed by May 1 but all of that depended on appropriate progress.

The CEO also stated,

Let me make this perfectly clear again, in order to go down this road we had to conclude that under the current circumstances we would rather vacate NJ sanitation collection completely than suffer the silliness of the current situation.

In fact, the CEO has repeatedly made comments to City Officials that he would have sold the North Wildwood contract long ago if he could have as part of his efforts to improve the financial position of Gold Medal Environmental, a subsidiary of Kinderhook Industries, a multi-billion dollar private equity firm based in New York City.

On April 27, 2022, the City demanded via a letter from the City Solicitor to you, Counsel for GME, an unequivocal commitment from GME, in writing, that GME will continue to honor its current contract with the City of North Wildwood. GME has refused to supply the City with such a commitment.

Instead, the CEO has continued to equivocate, sending long emails to elected officials and business administrators reiterating GME's insistence that continued contract performance by GME will be conditioned upon acquiescence to GME's demands for substantial and material changes to the existing contract. Nothing in any of the CEO's emails comes close to being an unequivocal statement by GME that it will honor its obligations under the contract. While the City entered into discussions with GME in good faith and GME has apparently reached amicable agreements with some other municipalities, the fact of the matter is that GME continues to apply extraordinary undue duress upon various elected and appointed officials in North Wildwood in order to secure an economic benefit for GME via coerced official action by those public officials.

In its letter to GME of April 27, 2022, the City stressed that it would not proceed with further discussions under the continuing duress of garbage being left in the streets, among other threats. GME has done absolutely nothing to give any assurance to the City that it will perform as required under the contract. In fact, GME has done quite the opposite and has repeatedly indicated that it intends, not that it might, but that intends to breach the contract if the City of North Wildwood does not immediately succumb to the duress placed upon it by GME.

A bid submitted in response to a public body's solicitation of bids, when it is accepted, becomes an executory contract that is mutually binding upon the parties. State v. Ernst & Young, L.L.P., 386 N.J. Super. 600, 612 (App. Div. 2006). An anticipatory breach occurs when a party to such a contract declares an intention to refuse to perform as required under the contract. Id. Clearly, GME has repeatedly stated its intention to refuse to perform. Under these circumstances, the nonbreaching party, here the City, may treat the contract as terminated. Ross Systems v. Linden Dari-Delite, Inc., 35 N.J. 329, 341 (1961); Miller and Sons Bakery Co. v. Selikowitz, 8 N.J. Super. 118, 122 (App. Div. 1950). In fact, while the threat of breach here is direct, express, unequivocal and clear, the law recognizes that a party may consider a contract terminated for anticipatory breach where there are reasonable grounds by the party to conclude that the other party will refuse to perform under the contract. Spring Creek Holding Company, Inc. v. Shinnihon U.S.A. Co., LTD, 399 N.J. Super. 158, 178-179 (App. Div. 2008).

The City would have been well within its contractual and legal rights to declare the contract terminated and advise GME of same once it became clear nearly two months ago that GME intended to effectuate a unilateral, material breach of the contract. Instead, the City extended the courtesy to GME of a demand for adequate assurance of future performance under the contract. GME refused to supply such an assurance, leaving the City to its legal remedies, including termination of the contract.

Now, under all the circumstances here, it would be disingenuous at best for GME to attempt to do offer assurances given that GME has essentially destroyed the ability of the City to place trust in any statement GME might now make in an effort to save the contract from this legally warranted termination. The City's decision to terminate the contract is appropriate as a matter of law, especially in light of the City's request for adequate assurance of performance and GME's refusal to supply same. Id. at 179-180.

On April 14, 2022, the CEO sent an email to the City Solicitors for Ocean City and North Wildwood and introduced you as GME's "New Jersey legal counsel." I thank you for the discussions we have

had in an effort to resolve this matter. However, according to the CEO's instruction that you are legal counsel for GME in New Jersey, we have sent this correspondence to your attention. Not copying the CEO is not meant as a slight, but rather is required, as you know, by the strictures of R.4.2 of the New Jersey Rules of Professional Conduct for attorneys.

Again, this serves as notice to Gold Medal Environmental, New Jersey, Inc., that for the reasons stated hereinabove, the City of North Wildwood has terminated the contract in question.

Of course, the provisions of the contract allowing the City to pursue GME for damages associated with their breach survive the termination of the contract and the city has every intention of pursuing such recoupment. The City is also more than willing to assist GME in the removal of its equipment, if any, from City property in the near term.

Thank you.

Most Sincerely,



Michael J. Donohue
City Solicitor
City of North Wildwood, New Jersey

CC: Client via email